

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

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JOSEPH HARTE,

Plaintiff,

-against-

10 CV 3916 (RJD) (MDG)

AMENDED COMPLAINT

**WOODS HOLE OCEANOGRAPHIC
INSTITUTION and DIEGO MELLO,**

JURY TRIAL DEMANDED

Defendants.

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Plaintiff, by and through his counsel, The Law Firm of Eric Andrew Suffin, states the following as his Complaint against the defendants:

NATURE OF ACTION

1. This action seeks to recover damages for age discrimination and retaliation by defendants against plaintiff.

PARTIES

2. Plaintiff, Joseph Harte, resides at 1276 East 85th Street Avenue M, Brooklyn, NY 11236.
3. Defendant Woods Hole Oceanographic Institution ("WHOI") maintains a location at 98 Water Street, Iselin Marine Facility MS # 27, Woods Hole, MA 02543.
4. Defendant WHOI employed 4 or more employees.
5. Defendant Diego Mello ("Mello") was a supervisor of plaintiff and an agent of defendant WHOI.

FACTS

6. Plaintiff was hired as a Cook/Steward in or about 2007.
7. Defendant WHOI had knowledge plaintiff's residence was in New York.

8. At all times relevant herein plaintiff performed his job competently.
9. After working as a Cook on the Knorr Ship, plaintiff trained for months to be a Cook on the England Ship.
10. Despite being hired as a Cook/Steward plaintiff was told he wasn't wanted as a Cook on a ship going to Saudi Arabia.
11. Thereafter, despite having more experience than other Cooks/Stewards and being hired as a Cook/Steward, plaintiff was often reassigned to a Messman position, with a corresponding reduction in pay.
12. On one ship, Santos, a government subsidized employee, asked plaintiff, why aren't you a Cook, and told plaintiff to take that position.
13. The Captain, defendant Mello, later asked plaintiff, why are you talking to Santos about not being a Cook, and told plaintiff, now I have to take you off Messman and make you a Cook.
14. When plaintiff performed the job of Messman, the Cooks, all younger than plaintiff, asked plaintiff to do the job responsibilities of the Cook position while plaintiff was assigned to the Messman position and was being paid as a Messman.
15. On each ship plaintiff worked on plaintiff complained to defendant Diego about the younger Cook asking him to do Cook responsibilities while he was assigned the Messman position and was being paid as a Messman.
16. Defendant Diego told plaintiff, if they tell you to jump, jump.
17. Through April 1, 2010 plaintiff received good performance evaluations.
18. Nonetheless, defendant Diego told plaintiff the ship was getting hard for him (plaintiff).
19. On or about April 7, 2010 defendant Diego said to plaintiff, I'm nearly as old as you, I'm getting fed up.

20. On or about April 7, 2010, defendant Diego said to plaintiff, you're 63 years old and should resign.

21. Plaintiff indicated to defendant Diego that he had 1 year and 9 months to go to get a pension.

22. Plaintiff indicated to defendant Diego that he was going to complain to someone in the office of defendant WHOI, and to the United States Coast Guard.

23. Though plaintiff did not resign, defendant Diego said, I accept your resignation.

24. Plaintiff indicated to defendant Diego that he never resigned.

25. Defendant Diego indicated to plaintiff that he had witnesses to plaintiff resigning.

26. When plaintiff went to Human Resources, a Human Resources employee told plaintiff to write why he was resigning.

27. Plaintiff indicated to that employee that he was not resigning.

28. The Human Resources employee indicated that defendant Diego said he was resigning.

29. When plaintiff refused to sign paperwork regarding an alleged resignation the Human Resources employee called defendant Diego.

30. Plaintiff was told not to go back on the ship, was not allowed to retrieve his clothing, and was given traveling money to get home.

31. Thereafter plaintiff received a letter from Emily Schorer, alleging to be the Director of Human Resources at defendant WHOI, terminating plaintiff's employment.

32. Plaintiff continues to reside in New York.

33. Plaintiff was not the only employee of WHOI that resided in New York State.

**AS AND FOR PLAINTIFF'S FIRST CAUSE OF ACTION AGAINST DEFENDANTS
FOR AGE DISCRIMINATION UNDER FEDERAL LAW**

34. Plaintiff incorporates paragraphs 1-33 as if fully rewritten herein.

35. By and through their course of conduct, defendants, and defendant WHOI's agents violated the Age Discrimination in Employment Act ("ADEA"), 29 U.S.C. § 621 et seq., by terminating plaintiff's employment because of his age.

**AS AND FOR PLAINTIFF'S SECOND CAUSE OF ACTION AGAINST DEFENDANTS
FOR RETALIATION UNDER FEDERAL LAW**

36. Plaintiff incorporates paragraphs 1-35 as if fully rewritten herein.

37. By and through their course of conduct, defendants, and defendant WHOI's agents violated the ADEA, 29 U.S.C. § 621 et seq., by retaliating against plaintiff for his opposition to a practice made unlawful by the ADEA.

**AS AND FOR PLAINTIFF'S THIRD CAUSE OF ACTION AGAINST DEFENDANT
WHOI FOR AGE DISCRIMINATION UNDER NEW YORK STATE LAW**

38. Plaintiff incorporates paragraphs 1-37 as if fully rewritten herein.

39. By and through their course of conduct, defendant WHOI and defendant WHOI's agents violated the New York State Human Rights Law, §§ 296 et seq. of the Executive Law, by terminating plaintiff's employment because of his age.

**AS AND FOR PLAINTIFF'S FOURTH CAUSE OF ACTION AGAINST DEFENDANT
WHOI FOR RETALIATION UNDER NEW YORK STATE LAW**

40. Plaintiff incorporates paragraphs 1-39 as if fully rewritten herein.

41. By and through their course of conduct, defendant WHOI and defendant WHOI's agents violated the New York State Human Rights Law, §§ 296 et seq. of the Executive Law, by retaliating against plaintiff for his opposition to age discrimination.

**AS AND FOR PLAINTIFF'S FIFTH CAUSE OF ACTION AGAINST DEFENDANTS
FOR AGE DISCRIMINATION UNDER MASSACHUSETTS STATE LAW**

42. Plaintiff incorporates paragraphs 1-41 as if fully rewritten herein.

43. By and through their course of conduct, defendants, and defendant WHOI's agents violated M.G.L. 151B, Chapter 151B of the General Laws of Massachusetts, by terminating plaintiff's employment because of his age.

**AS AND FOR PLAINTIFF'S SIXTH CAUSE OF ACTION AGAINST DEFENDANTS
FOR RETALIATION UNDER MASSACHUSETTS STATE LAW**

44. Plaintiff incorporates paragraphs 1-43 as if fully rewritten herein.

45. By and through their course of conduct, defendants, and defendant WHOI's agents violated M.G.L. 151B, Chapter 151B of the General Laws of Massachusetts, by retaliating against plaintiff for his opposition to age discrimination.

WHEREFORE, plaintiff prays this Court:

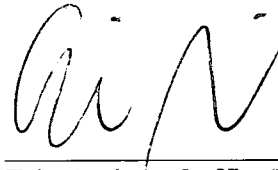
- (a) accepts jurisdiction over this matter;
- (b) impanels and charges a jury with respect to the causes of action;
and,
- (c) awards the following damages jointly and severally against both defendants:
 - i. Back pay, front pay, and all benefits along with pre and post judgment interest in the amount of one million dollars (\$1,000,000.00);
 - ii. Punitive, liquidated and compensatory damages, including, but not limited to, damages for pain and suffering, anxiety, humiliation, physical injury and emotional distress, in order to compensate plaintiff for the injuries he has suffered and to signal to other employers that discrimination in employment is repulsive to legislative enactments in the amount of one million dollars (\$1,000,000.00);
 - iii. Attorneys' fees, costs and expenses as provided for by applicable law; and

iv. Any other relief which this Court deems just and equitable.

Dated: September 8, 2010
New York, New York

Respectfully submitted,

THE LAW FIRM OF
ERIC ANDREW SUFFIN

A handwritten signature in black ink, appearing to read 'E. Suffin', written over a horizontal line.

By:

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